ragraph 3 of the Statement of Claim. The said option was valid for two weeks from the 8th August, 1980 and was subject to contract being signed.

3a. The Defendant contends and will contend that since the option was subject to contract being signed and no contract was ever signed, there was no concluded contract between Plaintiff and the Defendant.

4. The Defendant has no knowledge of the allegations contained in paragraph 5 of the Statement of Claim."

Substantially the appeal evolves around a question of fact. In this regard we see no reason to differ from the finding of the learned Judge that the respondent did exercise the option by tendering the 10% deposit, a sum of $27,000/- within the two week period stipulated in the option but this was rejected by the appellant. In our view it is quite apparent that there was a change of heart on the part of the appellant and she had decided to repudiate the agreement. This is evident by the fact that she omitted to turn up in Kuala Lumpur as promised on two occasions. More importantly she had not challenged the respondent's allegation that she had told the respondent that she was no longer willing to sell the property. The appellant's husband was fully in the picture and in fact he had full knowledge of the fact that the respondent had properly exercised her option. This explained the reason for the return of the letter exercising the option and the cheque to the respondent.

The only question of law raised by the appellant in her defence is to be found in paras 3 and 4 of the amended defence *(supra)*. In this respect the learned Judge made a finding as follows:

"But the Defendant has failed to show that there were matters which remained to be discussed between her and the Plaintiff and which had to be embodied in a formal sale and purchase agreement."

In the circumstances of this case we see no merit in the appellant's contention. In our view the evidence and exhibits in this case and also the conduct of the appellant clearly show that it was the intention of the parties to come to a definite and complete agreement on the subject of the sale. What remained to be done was for the respondent to exercise the option in accordance with the terms stated in the option. The mere fact that it was subject to an agreement to be signed did not necessarily mean there was no legal binding and enforceable agreement. (See *Lim Keng Siong & Anor.* v. *Yeo Ah Tee*).[1]

In our judgment the learned Judge had not erred at all in law or in fact in arriving at the decision that he did. For this reason therefore we would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Bashir & Co.; Choong Yik Son.*

RETHANA v. GOVERNMENT OF MALAYSIA

[F.C. (Mohamed Azmi F.J.) March 13 to 20, 1984]
[Kuala Lumpur – Federal Court Civil Application No. 2 of 1984]

Constitutional Law – Application for declaration that Employees' Social Security Act is unconstitutional – Whether application has to be made in Federal Court and whether leave of a Judge of the Federal Judge has to be obtained – Federal Constitution, arts. 4(3) & (4); & 128

In this case the applicant was injured while working in a factory and lost her thumb and three fingers. Under the provisions of the Employees Social Security Act, 1969 she belonged to a class of employees who were insured against such accidents and accordingly she was awarded a benefit of $1.50 per day giving her a sum of about $1,026 over a period of two years. She refused to accept the award contending that it was unconstitutional in that if she were not barred by the Act to sue her employees for negligence she could expect to get much higher damages. She applied to a Judge of the Federal Court for leave to commence proceedings in the Federal Court for a declaration that the Act was inconsistent with various provisions of the Constitution and further for a declaration that the Act is void to the extent of such inconsistencies.

Held: in the present case the Employees Social Security Act, 1969, is being challenged not on the basis that Parliament has no power to enact it but on the ground that some of its provisions are inconsistent with certain provisions of the Constitution. The intended suit is within the jurisdiction of the High Court and therefore the provision of Article 4(4) of the Federal Constitution regarding leave to commence proceedings in the Federal Court does not arise.

Cases referred to:

(1) *Syarikat Banita Sdn. Bhd.* v. *Government of State of Sabah* [1977] 2 M.L.J. 217, 218.

(2) *East Union (M) Sdn. Bhd.* v. *Government of the State of Johore and Government of Malaysia* [1980] 2 M.L.J. 143.

FEDERAL COURT.

Karam Singh Veriah for the applicant.

Datuk Abu Mansor Ali (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Mohamed Azmi F.J.: On November 12, 1981, the right hand of Miss Rethana aged 18 years was caught in a cutting machine whilst working at the plywood factory of Weng Meng Industrial Sdn. Bhd. at Puchong, Selangor. As a result of the accident, she lost her thumb and three fingers which is indeed a tragedy for a young girl of her age. Under the provisions of the Employees' Social Security Act, 1969, she belongs to a class of employees who are insured against such accidents, and accordingly she has been awarded under the Act a benefit of $1.50 per day giving her a sum of about $1,026/– over a period of two years. She refuses to accept the award contending that it is unconstitutional in that if she had not been barred by the Act to sue her employer for negligence in a Court of Law, she would expect the court to award her damages in the region of $74,000/– based on current awards given by the courts for similar injuries. Through her father and next friend Mr. M. Rajasigamoney, she applies to me as a Federal Judge by notice of motion for leave under Article 4(4) of the Federal Constitution to commence proceedings in the Federal Court against the Government of Malaysia for a declaration that sections 31, 42, 43, 58, 84 and 87 of the Employees' Social Security Act and also the schedules to the said Act are inconsistent with various provisions of the Constitution, and further for a declaration that the said Act of Parliament is void to the extent of such inconsistencies.

The main issue for determination is whether such proceedings must be commenced in the Federal Court as a Court of first instance so as to require her to obtain leave of a judge of the Federal Court as provided by Article 4(4) of the Constitution. Article 4(1) provides that, "This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void". It thus contains an important declaration of a principle. Clauses (2) and (3) of Article 4 then provide the scope and extent of the right to challenge the validity of any law passed by Parliament or the Legislature of any State; whilst clause (4) which must be read together with Article 128(1)(a) provides the forum where it can be challenged. It would be instructive to reproduce the relevant provisions of Articles 4(3) and 4(4) and as well as Article 128(1)(a), in so far as laws enacted by Parliament are concerned, in disputes other than between the Federation and one or more States. They are as follows:–

Article 4(3)
"The validity of any law made by Parliament ..... shall not be questioned on the ground that it makes provision with respect to any *matter* with respect to which Parliament ..... has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground ....."

Article 4(4)
"Proceedings for a declaration that a law is invalid on the grounds mentioned in Clause (3) ... shall not be commenced without the leave of a judge of the Federal Court; ....."

Article 128(1)(a)
"The Federal Court shall, to the exclusion of any other court, have jurisdiction to determine in accordance with any rules of court regulating the exercise of such jurisdiction any question whether a law made by Parliament ... is invalid on the ground that it makes provision with respect to a *matter* with respect to which Parliament ... has no power to make laws; ..." (the emphasis is mine)

The word "matter" in Articles 4(3) and 128(1)(a) came up for determination before Suffian L.P. in the case of *Syarikat Banita Sdn. Bhd.* v. *Government of State of Sabah.*[1] He dealt with it in the following words:–

"In the light of *Stephen Kalong Ningkan* v. *Tun Haji Abang Openg & Tawi Sli (No. 2), Yeoh Tat Thong* v. *Government of Malaysia & Anor.* and *Ah Thian* v. *Government of Malaysia* I agreed with the learned State Attorney-General of Sabah that the word "matter" in clause (3) of article 4 has the same meaning as the word "matters" in clause (2) of the article 74, that as the impugned subsection deals with a state subject, i.e. a matter with respect to which the Sabah legislature has power to make law, the proposed challenge to the validity of the new subsection does not come within clause (4) of article 4 or clause (1)(a) of article 128.

The validity of the new subsection is to be challenged not on the ground that it deals with a matter with respect to which the Sabah legislature has no power to make law (on the contrary, as already stated, it was conceded that it deals with a matter within the competence of that legislature). It is to be challenged on the ground that it is contrary to several provisions of the constitution. The fact, if such be it, that it is so contrary does not mean that it deals with a matter with respect to which the State legislature has no power to make law."

Later in 1980, Suffian L.P. had another opportunity to consider the same point in *East Union (M) Sdn. Bhd.* v. *The Government of the State of Johore and the Government of Malaysia*[2]. There the learned Lord President distinguished the case from *Syarikat Banita (ante)* in that in the earlier case which dealt with a new subsection 24(7) of the Sabah Enactment "the contention was that the impugned law was contrary to the Constitution"; whereas in *East Union* which concerned the validi-

ty of section 100 of the National Land Code "the contention here being that Parliament exceeded the power given to it by Article 76(4) when it enacted the section. In other words, the contention is that Parliament did not have power to enact it." With great respect, I entirely agree with the judgments of the learned Lord President in both the cases. Under our Constitution, the Federal Court is an appellate Court and its exclusive original jurisdiction is limited. In my opinion, this particular original jurisdiction of the Federal Court conferred by Article 128(1)(a) read with section 45 of the Courts of Judicature Act 1964 should be strictly construed and confined to cases where the validity of any law passed by Parliament or any State Legislature is being challenged on the ground that Parliament has legislated on a matter outside the Federal List or Concurrent List; or a State Legislature has enacted a law concerning a matter outside the State List or the Concurrent List as contained in the ninth Schedule to the Federal Constitution. To extend the exclusive original jurisdiction of the Federal Court to matters which are not expressly provided by the Constitution would apart from anything else, deprive aggrieved litigants of their right of appeal to the highest Court in the land.

In the present case the Employees' Social Security Act, 1969 is being challenged not on the basis that Parliament has no power to enact it, but on the ground that some of its provisions are inconsistent with certain provisions of the Constitution. Being a social legislation involving matters pertaining to labour and social security, there can be no argument that the subject matter of the Act is covered by item (15) of the Federal List, and as such the proceedings intended to be initiated against the Government of Malaysia is one in which the Federal Court has no exclusive original jurisdiction within the ambit of Article 128(1)(a). Consequently, the intended suit should not be litigated in the Federal Court in the first instance. Since the intended suit is within the original jurisdiction of the High Court, the provision of Article 4(4) regarding leave to commence proceedings in the Federal Court does not arise. I accordingly rule that the present application for leave is misconceived. By virtue of section 47 of the Courts of Judicature Act, 1964, I made no order as to costs.

Ruled accordingly.

Solicitors: *Karam Singh Veriah & Co.*

JOGINDER KAUR & ANOR. v. SOHAN SINGH & ANOR.

[F.C. (Salleh Abas C.J. (Malaya), Abdul Hamid & Syed Agil Barakbah F.JJ.) November 15, 1983 & April 13, 1984]

[Kuala Lumpur – Federal Court Civil Appeal No. 20 of 1983]

Probate & Administration – Administration of estate – Claim that deceased was beneficial owner of piece of land – Money borrowed by deceased and land transferred in payment of debt – Whether there was breach of Moneylenders Ordinance – Whether transfer adequately stamped – Stamp Ordinance 1949, ss. 12A, 47 & 52.

In this case the appellants the co-administratrix and co-administrator of the estate of the Gurdial Singh deceased claimed a declaration that the estate of the deceased was the beneficial owner of a piece of land. Their main allegation was fraud on the part of the respondents. The learned trial judge dismissed the claim. The appellants appealed, but on appeal all the grounds of appeal including the allegation of fraud were abandoned, except for two grounds: (1) that the learned judge misdirected himself when he made wrong inferences by accepting as true the consideration of the land which was stated to be $10,000 on the transfer form and the said sum must have been meant for the cash payment of $10,000 paid on the date of transfer; (2) that the learned judge erred in law and in fact in concluding that there was no breach of the provisions of the Moneylenders Ordinance.

Held: (1) the learned trial judge was right in concluding that the transfer of the land was executed legally for the total consideration of the sum total of the unpaid loans together with unpaid interest thereon up to the date of transfer plus a further cash payment of $10,000/–;

(2) the learned judge was right in accepting the first respondent's explanation that he was not aware that the loans advanced earlier had to be included in the transfer form together with the $10,000/– cash paid on the day of transfer as consideration;

(3) the memorandum of transfer was duly stamped under the Stamp Ordinance and the memorandum of transfer was therefore admissible in evidence and could be acted upon, registered or authenticated by any public officer by virtue of section 52(1) of the Stamp Ordinance;

(4) there was no breach of the Moneylenders Ordinance in this case, as contended by the appellants.

Cases referred to:

(1) *Navaradnam* v. *Suppiah Chettiar* [1973] 1 M.L.J. 173, 174.

(2) *Menaka* v. *Lum Kum Chum* [1977] 1 M.L.J. 91, P.C.

FEDERAL COURT.

Gopal Davidson (*P.S. Moorthy* with him) for the appellant.

Dato Morris Edgar for the respondent.

Cur. Adv. Vult.